

1 Todd M. Friedman (SBN 216752)
2 Adrian R. Bacon (SBN 280332)
3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
4 21550 Oxnard St., Suite 780
5 Woodland Hills, CA 91367
6 Phone: 323-306-4234
7 Fax: 866-633-0228
8 tfriedman@toddflaw.com
9 abacon@toddflaw.com

10 *Attorneys for Plaintiff*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ABANTE ROOTER AND PLUMBING) Case No.
14 INC, individually and on behalf of all)
15 others similarly situated,) **CLASS ACTION**
16 Plaintiff,)
17 vs.) **COMPLAINT FOR VIOLATIONS**
18 LA Mart and DOES 1 through 10,) **OF:**
19 inclusive,)
20 Defendant.) 1. NEGLIGENT VIOLATIONS
21) OF THE TELEPHONE
22) CONSUMER PROTECTION
23) ACT [47 U.S.C. §227(b)]
24) 2. WILLFUL VIOLATIONS
25) OF THE TELEPHONE
26) CONSUMER PROTECTION
27) ACT [47 U.S.C. §227(b)]
28)

1) **DEMAND FOR JURY TRIAL**
2)
3)
4)
5)

6 Plaintiff ABANTE ROOTER AND PLUMBING INC ("Plaintiff"),
7 individually and on behalf of all others similarly situated, alleges the following
8 upon information and belief based upon personal knowledge:
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of LA MART (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a California corporation with its principle place of business also in California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a California Company. Plaintiff also seeks up to \$1,500.00 in damages for each call; in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant do business within the State of California and Plaintiff resides within the County of Alameda.

PARTIES

4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), is a rooting and plumbing business in Emeryville, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

5. Defendant, LA MART, is a trading business and is a "person" as defined by *47 U.S.C. § 153 (39)*.

6. The above-named Defendant, and their subsidiaries and agents, are collectively referred to as “Defendant.” The true names and capacities of the Defendant sued herein as DOE DEFENDANTs 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendant designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendant. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendant.

FACTUAL ALLEGATIONS

8. On or around December 2018, Defendant contacted Plaintiff on Plaintiff's cellular telephone number ending in -6147 in an attempt to solicit Plaintiff to purchase Defendant's services.

9. Defendant used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone number (858)300-7045 belonging to Defendant.

11. Defendant's call constituted call that was not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

13. During all relevant times, Defendant did not possess Plaintiff's "prior

1 express consent" to receive calls using an automatic telephone dialing system or an
2 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
3 227(b)(1)(A).

4 14. Plaintiff received numerous solicitation calls from Defendant within a
5 12-month period.

6 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
7 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

8 16. Plaintiff never granted Defendant any prior express consent nor was
9 any established business relationship with Defendant in existence as defined under
10 16 C.F.R. 310.4(b)(1)(iii)(B).

11 17. Upon information and belief and based on Plaintiff's experiences of
12 being called by Defendant after requesting they stop calling, and at all relevant
13 times, Defendant failed to establish and implement reasonable practices and
14 procedures to effectively prevent telephone solicitations in violation of the
15 regulations prescribed under 47 U.S.C. § 227(c)(5).

16

17 **CLASS ALLEGATIONS**

18 18. Plaintiff brings this action individually and on behalf of all others
19 similarly situated, as a member the four proposed classes (hereafter, jointly, "The
20 Classes"). The class concerning the ATDS claim for no prior express consent
21 (hereafter "The ATDS Class") is defined as follows:

22 All persons within the United States who received any
23 solicitation/telemarketing telephone calls from
24 Defendant to said person's cellular telephone made
25 through the use of any automatic telephone dialing
26 system or an artificial or prerecorded voice and such
27 person had not previously consented to receiving such
28 calls within the four years prior to the filing of this
Complaint.

1
2 19. Plaintiff represents, and are a member of, The ATDS Class, consisting
3 of all persons within the United States who received any collection telephone calls
4 from Defendants to said person's cellular telephone made through the use of any
5 automatic telephone dialing system or an artificial or prerecorded voice and such
6 person had not previously not provided their cellular telephone number to
7 Defendants within the four years prior to the filing of this Complaint.

8 20. Defendants its employees and agents are excluded from The Class.
9 Plaintiff do not know the number of members in The Class, but believes the Class
10 members number in the thousands, if not more. Thus, this matter should be
11 certified as a Class Action to assist in the expeditious litigation of the matter.

12 21. The Class is so numerous that the individual joinder of all of its
13 members is impractical. While the exact number and identities of The Class
14 members are unknown to Plaintiff at this time and can only be ascertained through
15 appropriate discovery, Plaintiff is informed and believe and thereon allege that The
16 Class includes thousands of members. Plaintiff allege that The Class members may
17 be ascertained by the records maintained by Defendant.

18 22. Plaintiff and members of The ATDS Class were harmed by the acts
19 of Defendants in at least the following ways: Defendants illegally contacted
20 Plaintiff and ATDS Class members via their cellular telephones thereby causing
21 Plaintiff and ATDS Class members to incur certain charges or reduced telephone
22 time for which Plaintiff and ATDS Class members had previously paid by having
23 to retrieve or administer messages left by Defendants during those illegal calls, and
24 invading the privacy of said Plaintiff and ATDS Class members.

25 23. Common questions of fact and law exist as to all members of The
26 ATDS Class which predominate over any questions affecting only individual
27 members of The ATDS Class. These common legal and factual questions, which
28 do not vary between ATDS Class members, and which may be determined without

1 reference to the individual circumstances of any ATDS Class members, include,
2 but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendants made any telemarketing/solicitation
5 call (other than a call made for emergency purposes or made
6 with the prior express consent of the called party) to a ATDS
7 Class member using any automatic telephone dialing system or
8 any artificial or prerecorded voice to any telephone number
9 assigned to a cellular telephone service;
- 10 b. Whether Plaintiff and the ATDS Class members were damaged
11 thereby, and the extent of damages for such violation; and
- 12 c. Whether Defendants should be enjoined from engaging in such
13 conduct in the future.

14 24. As a person that received numerous telemarketing/solicitation calls
15 from Defendants using an automatic telephone dialing system or an artificial or
16 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
17 claims that are typical of The ATDS Class.

18 25. Plaintiff will fairly and adequately protect the interests of the members
19 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 26. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Class members is impracticable. Even if every Class member could afford
24 individual litigation, the court system could not. It would be unduly burdensome
25 to the courts in which individual litigation of numerous issues would proceed.
26 Individualized litigation would also present the potential for varying, inconsistent,
27 or contradictory judgments and would magnify the delay and expense to all parties
28 and to the court system resulting from multiple trials of the same complex factual

1 issues. By contrast, the conduct of this action as a class action presents fewer
2 management difficulties, conserves the resources of the parties and of the court
3 system, and protects the rights of each Class member.

4 27. The prosecution of separate actions by individual Class members
5 would create a risk of adjudications with respect to them that would, as a practical
6 matter, be dispositive of the interests of the other Class members not parties to such
7 adjudications or that would substantially impair or impede the ability of such non-
8 party Class members to protect their interests.

9 28. Defendants have acted or refused to act in respect generally applicable
10 to The Class, thereby making appropriate final and injunctive relief with regard to
11 the members of the Class as a whole.

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(b).**

15 29. Plaintiff repeats and incorporates by reference into this cause of action
16 the allegations set forth in the paragraphs above.

17 30. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
20 *47 U.S.C. § 227 (b)(1)(A)*.

21 31. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
22 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
23 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

24 32. Plaintiff and the ATDS Class are also entitled to and seek injunctive
25 relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

33. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

35. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

36. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

37. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 26th day of May, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff